No. 12226.

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

HELEN YOUNG,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

PETITION FOR REHEARING.

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TOPICAL INDEX

TABLE OF AUTHORITIES CITED

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Comes Helen Young, Appellant herein, and respectfully petitions the above entitled Court to rehear her appeal herein.

Principal Point of Appeal Undetermined.

Appellant urges this Honorable Court that the principal point urged by her in her appeal herein was not determined by the opinion of this Court rendered November 14, 1949. Such opinion turned principally upon the validity of the practice of incorporation by reference. On page 3 of such opinion, after stating that Appellant insisted that Congress has failed to denounce the acts charged in the indictment as crimes, the Court states:

> "The incorporation of statutes by reference has been a common practice in Federal legislation, and the adoption of an earlier statute by reference makes it as much a part of the latter statute as though it had been incorporated at full length."

Not only in her briefs heretofore filed, but in her oral argument, Appellant sought to make clear that she had no quarrel with the practice of incorporation of statutes by reference. What she did urge was that, taking the statutes relied upon by the Government at their face value, they did not denounce the acts attributed to her in the indictment as crimes.

The Penal Section Denounces Other Acts Than Those Charged.

Section 715 of Title 38, U. S. C. A., is specific in the acts it denounces. In so far as it is pertinent, it reads as follows:

> "Any person who shall knowingly make or cause to be made, or conspire, aid, or assist in, agree to, arrange for, or in any wise plan the making or presentation of a false or fraudulent affidavit, declaration, certificate, statement, voucher, or paper, or writing purporting to be such, concerning any claims for benefits under sections * * * of this act, shall be guilty of a misdemeanor * * *."

Sections 694a and 697 of Title 38, U. S. C. A. are not mentioned in Section 715. They could not have been so mentioned in such section since at the time of the enactment of Section 715, *supra,* in its present form, the so-called G. I. Bill of Rights containing 694a and 697 of Title 38, U. S. C. A., had not yet been passed.

Since Section 715, *supra,* has reference to the filing of papers claiming benefits under certain specific sections named therein, and since the benefits sought in the instant case were under Section 694a of said title which is not named therein, Congress has, whatever its intent, failed to denounce the acts attributed to Appellant.

Congress Must Not Only Have an Intent, but Must Express It.

In our earlier Briefs, we have referred extensively to *U. S. v. Evans,* Advance Opinion citation, Vol. 92, p. 585, In that case Congress's intent to denounce the harboring of aliens illegally entered into the United States was much more plainly expressed, we urge, than is its intent to denounce the acts herein attributed to Defendant.

In the *Evans* case, however, the Supreme Court made it clear that mere Congressional intent was not enough, unless the same be plainly stated.

We quote from page 589:

> "We are not willing to undertake extension of the penalty provision blindfold, without knowing in advance to what acts the penalties may be applied. Nor are we any more willing to decide wholesale among the various possibilities of coverage. That problem, squarely presented in concrete instances, might be resolved step by step, were there no difficulty over the penalty. But to resolve it broadside now for all cases the section may cover, on this indirect presentation, would be to proceed in an essentially legislative manner for the definition and specification of the criminal acts, in order to make a judicial determination of the scope and character of the penalty."

The Government contended in the *Evans* case that "* * * because Congress intended to authorize punishment, but failed to do so, probably as a result of oversight, we (the Court) shall plug the hole in the statute." (P. 588.) This in the *Evans* case the Court refused to do. Our contention is that it should likewise refuse to torture the language of the statutes in the instant case.

Conclusion.

We urge, therefore, that the Court rehear the above entitled case and reverse the judgment of the District Court rendered therein, in that the law relied on by Appellee does not make the acts attributed to the Appellant in the indictment an offense against the Government.

Respectfully submitted,

HAL HUGHES,

Attorney for Appellant.

Certificate.

The undersigned, Hal Hughes, attorney of Appellant, Certifies that in his judgment this Petition for Rehearing is well founded and that the same is not interposed for delay.

Dated, the 12th day of December, 1949.

HAL HUGHES.